STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 11, 2013
v	No. 309454 Kalamazoo Circuit Court
ARRONTIKIFF MARICE MALORY, Defendant-Appellant.	LC No. 11-001310-FH

Before: MURPHY, C.J., and FITZGERALD and HOEKSTRA, JJ.

PER CURIAM.

A jury convicted defendant of felon in possession of a firearm, MCL 750.224f; assault with a dangerous weapon, MCL 750.82; and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a fourth-offense offender, MCL 769.12, to prison terms of 12 months to 15 years for both the felon in possession and assault with a dangerous weapon convictions, and to two concurrent terms of two years each for the felony-firearm convictions. Defendant appeals as of right, challenging only the jury selection process. We affirm.

Alleged violations of the jury selection process are reviewed de novo. *People v Fletcher*, 260 Mich App 531, 554; 679 NW2d 127 (2004), citing *People v Schmitz*, 231 Mich App 521, 528; 586 NW2d 766 (1998). Likewise, the interpretation of court rules is a question of law that is reviewed de novo. *Id*., citing *Marketos v American Employers Ins Co*, 465 Mich 407, 412; 633 NW2d 371 (2001). However, because defendant failed to object to the process of jury selection in this case and failed to utilize all available peremptory challenges, his claim is unpreserved and is therefore reviewed for plain error. See *People v Carines*, 460 Mich 750, 765-766; 597 NW2d 130 (1999). A defendant is not entitled to relief under this test "unless he can establish (1) that the error occurred, (2) that the error was 'plain,' (3) that the error affected substantial rights, and (4) that the error either resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings." *People v Vaughn*, 491 Mich 642, 654; 821 NW2d 288 (2012) (citations omitted).

The relevant rule governing the replacement of potential jurors is MCR 2.511(G), which provides that "[a]fter the jurors have been seated in the jurors' box and a challenge for cause is sustained or a peremptory challenge or challenges exercised, another juror or other jurors must be selected and examined. Such jurors are subject to challenge as are previously seated jurors."

In this case, the trial court did not immediately replace struck panel members after one party made its peremptory challenges and before asking the other party if it wished to make peremptory challenges. Defendant asserts the trial court erred by failing to fill the vacated seats before the other party exercised any peremptory challenges. We disagree.

Defendant acknowledges that MCR 2.511(G) refers to peremptory "challenge or challenges," before declaring "another juror or jurors must be selected," but claims that this refers only to instances when a single party issues more than one peremptory challenge at the same time. Defendant is asking this Court to read language into the court rule that is simply not there. Nothing in the court rule requires the seating of a new juror or jurors following the exercise of peremptory challenges by one party, and this Court will not read language into a court rule that does not reflect the intent of the drafter as expressed by the plain language used. See *Tinman v Blue Cross and Blue Shield of Mich*, 264 Mich App 546, 557-558; 692 NW2d 58 (2004) (citation omitted). MCR 2.511(E)(3)(a) provides a procedure where first plaintiff and then the defendant exercise challenges. MCR 2.511(G) provides that after the challenges, "another juror or other jurors must be selected and examined. Such jurors are subject to challenge as are previously seated jurors." The process used the trial court in this case allowed the parties an opportunity to rapidly issue additional peremptory challenges with which they were confident. Each held the unilateral ability to halt the process at every round and force vacated seats to be filled before choosing whether or not to issue peremptory challenges against any of the potential jurors. Defendant has not alleged that he was denied an opportunity to question replacement jurors. Further, MCR 2.511(A)(4) provides that "[p]rospective jurors may be selected by any other fair and impartial method directed by the court or agreed to by the parties." The process utilized by the court was fair and impartial. Defendant's claim is without merit.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra